



Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-820
Regulation title	General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
Action title	Amend and Reissue the Existing Regulation
Document preparation date	April 25, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action consists of the reissuance of 9 VAC25-820 General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The regulation provides for the permitting of Total Nitrogen and Total Phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth. Changes to the existing regulation include new wasteload allocations for some facilities as required by the December 29, 2010 Chesapeake Bay TMDL, a number of changes to the administration of the program and implementation of several legislative changes as outlined below in the Substance section.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The basis of this regulation is §62.1-44.19:14 of the Code of Virginia as amended in the 2005 session of the General Assembly. As amended, §62.1-44.19:14 directs the State Water Control Board to issue a Watershed General Virginia Pollutant Discharge Elimination System (VDPES) Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program. Legal authority for issuing general permits under State Water Control Law is §62.1-44.15(5), 15(10), and 15(14).

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This rulemaking is proposed in order to amend and reissue the existing general permit which expires on December 31, 2011. The general permit governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. The facilities are authorized to discharge to surface waters and exchange credits for total nitrogen and/ or total phosphorus.

Substance

Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

In accordance with §62.1-44.19:14, the general permit includes 1) wasteload allocations for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads, 2) a schedule requiring compliance with the wasteload allocations as soon as possible for any facility whose wasteload allocation was reduced by the December 29, 2010 Chesapeake Bay Total Maximum Daily Load (TMDL), 3) monitoring and reporting requirements, 4) a procedure requiring affected owners or operators to secure general permit coverage, 5) a procedure for efficiently modifying the list of facilities covered by the general permit, and 6) such other conditions as the Board deems necessary to carry out the provisions of State and Federal law.

Changes made to the existing regulation include: (1) Reduced TN and TP wasteload allocations for the HRSD facilities on the James River and reduced TP allocations for all facilities in the York Basin along with appropriate schedules of compliance; (2) A new aggregate, Chlorophyll a-based TN and TP wasteload allocation for the significant James River dischargers with a compliance deadline of January 1, 2023; (3) Extending the registration deadline one month to November 1, 2011; (4) Adding provisions allowing for coverage under the general permit to be administratively continued, if necessary; (5)

Miscellaneous changes meant to correct inaccuracies introduced by previous requirements to calculate loads based on flows expressed to the nearest 0.01 MGD and to round nutrient loads to the nearest whole pound on a daily basis; (6) Establishing a baseline condition for offsets generated by new stormwater BMPs; (7) Updated prices of TN and TP credit purchases from the Water Quality Improvement Fund based on the cost of projects financed by the fund over the previous permit cycle; (8) A requirement that offsets required for the full 5-year term of the permit be provided at the time of registration; (9) Provisions to implement a number of bills addressing nutrient trading that have become effective since the original regulation was adopted; and (10) Updated TN and TP delivery factors.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantages to the public and to the agency of reissuing the general permit include minimizing compliance costs through implementation of nutrient trading and savings associated with the administration of a single watershed general permit. The regulatory action poses no disadvantages to the public or to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The regulation contains no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Locality Particularly Affected: This regulation is applicable throughout the Chesapeake Bay Watershed. The proposed amendments to the regulation, with two exceptions, also apply throughout the watershed. The two possible exceptions are the amendments associated with (1) the acquisition of credits by Eastern Shore facilities which is in response to legislation enacted by the 2010 General Assembly and (2) revised allocations for several facilities in response to the U.S. Environmental Protection Agency’s Chesapeake Bay TMDL (Caroline County Regional STP, Gordonsville STP, Hanover County Aggregate, White Birch Paper-Bear Island LLC Division, Western Refinery – Yorktown, Hampton Roads Sanitation District York

River Aggregate, Parham Landing WWTP – New Kent County, Smurfit Stone – West Point and Hampton Roads Sanitation District James River Aggregate).

The proposed amendments applicable throughout the watershed are not expected to impose a disproportionate material water quality impact on any locality that would not be experienced by the other localities. The proposed amendments associated with the two exceptions affect specific facilities which may imply that the localities where these facilities are located are localities particularly affected. However, whether there is a disproportionate material water quality impact on these localities that is not experienced by other localities is questionable as all localities within the Chesapeake Bay Watershed share the water quality impacts.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Allan Brockenbrough, Office of Water Permits and Compliance Assistance; Dept. of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone 804/698-4147, fax 804/698-4032 or email allan.brockenbrough@deq.virginia.gov. . Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by DEQ by 11:59 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

The general permit implements wasteload allocations included in the December 29, 2010 Chesapeake Bay TMDL. The TMDL includes reduced wasteload allocations for certain facilities in the York River Basin and the Lower James River Basin which will require more advanced treatment. The costs associated with the more advanced treatment may be minimized making use of the nutrient trading provisions included in the regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

As §62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation, there are no viable alternatives.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This general permit complements 9 VAC 25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed) and to 9 VAC 25-720 (the Water Quality Management Planning Regulation) and is intended to provided compliance flexibility to the affected facilities in order to ensure the most cost-effective nutrient reduction technologies are installed within the respective tributary watersheds. This regulation does not impose any additional compliance costs upon regulated entities above and beyond those already imposed by the aforementioned regulatory amendments and the Chesapeake Bay TMDL, and is intended to provide an alternative means of compliance in order to save the regulated entities money.

127 facilities were initially affected by this regulation, most of which are publicly owned treatment works or large industrial facilities. One facility (J.H. Miles) is categorized as a small business. Certain smaller new or expanded dischargers are required to register for general permit coverage in accordance with §62.1-44.19:14C.5 and §62.1-44.19:15 of the Code of Virginia as amended in the 2005 session of the General Assembly. These facilities would also be subject to 9 VAC 25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed); again, this proposed general permit should provide these new or expanding facilities compliance flexibility.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Michael Smith, Asst. Dir. Operations	Is concerned about the quantification level (QL) used in the calculations for daily concentrations	The Agency did not include specific QLs in the regulation because it has not observed reporting patterns indicating QL selection in

Stafford County Utilities	and thereby total loadings.	order to minimize reported loads was a problem.
Amy Ewing, Virginia Dept. of Game and Inland Fisheries	DEQ to look into alternatives to the use of chlorine for pre-treatment of waste water discharged by small treatment systems covered by this general permit regulation.	The use of chlorine is addressed in individual VPDES permits and not subject to the watershed general permit.
James J. Pletl, PhD; Chief, Technical Services Div. of HRSD	Has concerns about differences in reporting procedures and redundancy in reporting, unnecessary analytical requirements, and possibly unintended wastewater sampling restrictions. HRSD would like to provide assistance in developing the general permit regulation by serving on the TAC.	The Agency has worked to standardize analytical and reporting requirements in the general permit and minimize differences and redundancy between the general permit and the individual VPDES permits. HRSD representative served on the TAC
Andrew D. Mueller; U.S. Fish and Wildlife Service	Provided general statements about the need for nutrient reductions in the Chesapeake Bay watershed.	N/A

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability, including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no direct impact on the institution of the family or family stability.